APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/385,489	08/30/1999	THOMAS J. SULLIVAN	0110754/629	9228

24573   7590   08/13/2002

BELL, BOYD & LLOYD, LLC
PO BOX 1135
CHICAGO, IL 60690-1135

EXAMINER
LASTRA, DANIEL

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 May 2002* .

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-94* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-94* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____ .

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4)☐ Interview Summary (PTO-413) Paper No(s). _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: .

1.   Claims 1-94 have been examined.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-17, 19-62, 64-82 and 84-94 are rejected under 35 U.S.C. 102(a) as

being anticipated by Jones (U.S. 5,832,458).

As per claim 1, Jones teaches:

A method for an independent system operator to administer a trade promotion for

a product involving a manufacturer and a retailer having at least one store with an in-

store POS system, said method comprising the steps of the independent system

operator:

capturing terms of the trade promotion *at least including promoted product*

identification and payment term information for said trade promotion (see column 4,

lines 40-67; column 11, lines 20-67) ;

storing the captured terms of the trade promotion in an independent system

operator database (see column 4, lines 40-67; column 11, lines 20-67 – column 12,

lines 1-40);

collecting *from the retailer* product POS data from, at least one in-store POS

system of the retailer (see column 12, lines 11-40);

filtering the product POS data *using the promoted product identification stored in the independent system operator database* to obtain promoted product POS data (see column 12, lines 10-40);

processing the promoted product POS data in accordance with the stored *payment term information* of the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see column 4, lines 41-67; column 12, lines 10-40); and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion (see column 4, lines 60-67; column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment term information", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would inherent to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 2, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the, independent system operator database to independently verify the terms of the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40).

As per claim 3, Jones teaches:

The method of Claim 1, which further includes the steps of the independent system operator: enabling the retailer to change the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database (see column 11, lines 20-67 – column 12, lines 1-40).

As per claim 4, Jones teaches:

The method of Claim 3, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent, system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40).

As per claim 5, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed

promoted product POS data to determine the number of promoted products sold during

the trade promotion (see column 12, lines 10-40).

As per claim 6, Jones teaches:

The method of Claim 5, which further includes the step of the independent

system operator enabling the retailer and the manufacturer to access the processed

promoted product POS data to determine the amount of money the manufacturer owes

to the retailer for the trade promotion (see column 12, lines 10-40).

As per claim 7, Jones teaches;

The method of Claim 6, wherein the retailer and manufacturer use an internet to

access the stored terms of the trade promotion in the independent system operator

database, the number of promoted products sold during the trade promotion and the

amount of money the manufacturer owes to the retailer for the trade promotion (see

column 6, lines 53-67).

As per claim 8, Jones teaches:

The method of Claim 1, wherein the step of storing the captured terms of the

trade promotion includes storing the terms of the trade promotion in at least one

predefined table in the independent system operator database (see column 10, lines 58-

63).

As per claim 9, Jones teaches;

The method of Claim 8, wherein the step of storing the captured terms of the

trade promotion includes creating a UPC lists for the promoted products (see column 5,

lines 52-64).

As per claim 10, Jones teaches:

The method of Claim 9, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer (see column 10, lines 19-30).

As per claim 11, Jones teaches:

The method of Claim 10, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list (see columns 11 and 12).

As per claim 12, Jones teaches:

The method of Claim1, wherein the retailer has a plurality of stores with in-store POS systems and the step of collecting the product POS data includes collecting product POS data from the plurality of stores and consolidating all of the collected product POS data (see column 6, lines 11-67).

As per claim 13, Jones teaches:

The method of Claim 12, wherein the step of filtering the product POS data includes the step of generating a table of UPC codes for products active in the trade promotion (see column 8, lines 43-67).

As per claim 14, Jones teaches:

The method of Claim 12, wherein the step of filtering the product POS data includes the step of comparing the product POS data to the table of UPC codes to obtain the promoted product POS data (see column 6, lines 27-52).

As per claim 15, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances (see column 5, lines 51-64).

As per claim 16, Jones teaches:

The method of Claim 15, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the same product for a period prior to the beginning of the trade promotion (see column 12, lines 10-40).

As per claim 17, Jones teaches:

The method of Claim 1, wherein processing the promoted product POS data in accordance with the stored terms of, the trade promotion in the independent system operator database includes creating at least one, settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion (see column 12, lines 10-40).

As per claim 19, Jones teaches:

The method of Claim 1, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer (see column 12, lines 10-40).

As per claim 20, Jones teaches:

The method of Claim 1, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer (see column 12, lines 10-40).

As per claim 21, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see columns 11 and 12).

As per claim 22, Jones teaches:

The method of Claim 21, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see column 6, lines 27-52).

As per claim 23, Jones teaches:

A system for enabling an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said system comprising:

means for the independent system operator to capture the terms of the trade promotion for *the* promoted product *at least including promoted product identification*

and payment term information for said trade promotion (see column 4, lines 40-67 –

column 11, lines 20-67);

means for the independent system operator to collect *from the retailer* product

POS data from at least one in-store POS system of the retailer (see column 12, lines

11-40);

means for the independent system operator to filter the product POS data *using*

the promoted product identification to obtain promoted product POS data for the

promoted product (see column 12, lines 10-40);

means for the independent system operator to determine the amount of money

the manufacturer owes to the retailer based on the promoted product POS data and the

captured *payment term information* of the trade promotion (see column 4, lines 41-67;

column 12, lines 10-40); and

means for the independent system operator to pay the retailer the amount of

money determined by the independent system operator to be owed to the retailer by the

manufacturer for the trade promotion (see column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment

term information", but in lines 30-40 of column 12 Jones teaches that by crafting the

promotion contract around performance goals evidenced by incremental sales volume

increases, and having recourse to a valid third party audit of the performance achieved,

both retailer and manufacturer have a clear and current factual record to use in

resolving payment disputes. An audit, according to Jones, materially reduces the

current cost for both retailers and manufacturers to track, collate, and transmit data on

performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 24, Jones teaches:

The system of claim 23, wherein the retailer has a plurality of stores with in-store POS systems and the collection means collects product POS data from the plurality of retailer stores and consolidates the product POS data into a consolidated file for transfer to the filtering means (see column 12, lines 10-40).

As per claim 25, Jones teaches:

The system of Claim 24, wherein the filtering means includes means for the independent system operator to compare the product POS data to a list of UPC for the trade promotion to obtain the promoted product POS data (see column 8, lines 40-67).

As per claim 26, Jones teaches:

The system of Claim 24, wherein the filtering means includes means for comparing the product POS data to a list of UPC's for the promotion to obtain the promoted product POS data (see column 12, lines 10-40).

As per claim 27, Jones teaches:

The system of Claim 23, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer (see column 12, lines 10-40).

As per claim 28, Jones teaches:

The system of Claim 27, wherein the reporting means reports the promoted product POS data via the Internet (see column 6, lines 52-67).

As per claim 29, Jones teaches:

The system of Claim 23, wherein the determining means consolidates the promoted product POS data for a plurality of products for the manufacturer (see column 12, lines 10-40).

As per claim 30, Jones teaches:

A method for an independent system operator to administer a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

storing the terms of the trade promotions *at least including promoted product identification and payment term information for said trade promotion* in an independent system operator database (see column 4, lines 40-67 – column 11, lines 20-67);

providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions (see column 12, lines 10-40);

collecting *from the retailer* the product POS data during the trade promotions

from at least one in store POS system of the retailer (see column 12, lines 11-40);

filtering the product POS databased *on the stored promoted product identification*

to obtain promoted product POS data (see column 12, lines 11-40);

storing the promoted product POS data in the independent system operator

database (see column 12, lines 10-40);

determining an amount of money the manufacturer owes to the retailer based on

the promoted product POS data and the *payment term information* of the trade

promotion stored in the independent system operator database (see column 4, lines 60-

67; column 12, lines 10-40);

storing the amount of money the manufacturer owes the retailer in the

independent system operator database (see column 10, lines 10-40);

providing the retailer and manufacturer access to the independent system

operator database during the *conduct of the trade* promotion to determine the amount of

money the manufacturer owes the retailer for the trade promotion (see column 10, lines

10-40); and

facilitating payment to the retailer of the amount of money determined to be owed

to the retailer by the manufacturer (see column 4, lines 60-67; column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment

term information", but in lines 30-40 of column 12 Jones teaches that by crafting the

promotion contract around performance goals evidenced by incremental sales volume

increases, and having recourse to a valid third party audit of the performance achieved,

both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 31, Jones teaches:

The method of Claim 30, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see columns 11-12).

As per claim 32, Jones teaches:

The method of Claim 31, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see column 6, lines 27-52).

As per claim 33, Jones teaches:

A method for enabling a retailer and a manufacturer involved in a plurality of trade promotions for a plurality of products to independently verify the terms of the trade promotions, said method comprising the steps of:

capturing the terms of the trade promotions *at least including promoted product identification and payment term information* in an independent system which operates independently from the retailer and the manufacturer (see column 4, lines 40-67; column 11, lines 20-67);

storing the captured terms of the trade promotions in an electronic database of the independent system (see column 4, lines 40-67; column 11, lines 20-67 – column 12, lines 1-40); and

enabling the retailer and the manufacturer to access the electronic database of the independent system to determine the stored terms of the trade promotions (see column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment term information", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have

to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 34, Jones teaches:

The method of Claim 33, wherein the step of enabling the retailer and manufacturer to access the electronic database of the independent system to determine the terms of the trade promotions includes enabling the retailer and manufacturer to access the electronic database of the independent system through the internet (see column 6, lines 53-67).

As per claim 35, Jones teaches:

The method of Claim 34, which further includes the step of enabling the retailer to change the terms of the trade promotions stored in the electronic database of the independent system prior to the start of the trade promotions, capturing the changed terms of the trade promotions and storing the changed terms of the trade promotions in the electronic database of the independent system (see columns 11-12).

As per claim 36, Jones teaches:

The method of Claim 35, which further includes the step of enabling the retailer and the manufacturer to access the terms of the trade promotions stored in the electronic database of the independent system to independently verify the terms of the trade promotions and to determine if the retailer changed any of the terms of any of the trade promotions (see columns 11-12).

As per claim 37, Jones teaches:

A system for administering a trade promotion for a promoted product between a retailer and a manufacturer, said system comprising:

an independent system having a processor and an electronic database accessible by the processor which are adapted to capture and store the terms of the trade promotion for the promoted product *at least including promoted product identification and payment term information for said trade promotion (see column 4, lines 40-67; column 11, lines 20-67);*

to collect *from the retailer* promoted product POS data for the promoted product of the trade promotion from the retailer (see column 12, lines 11-40);

to process the collected promoted product POS data in accordance with the stored *payment term information* of the trade promotion in the electronic database to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see column 4, lines 40-67; column 12, lines 10-40); and

to facilitate the manufacturer's payment of the amount of money determined to be owed to the retailer for the trade promotion (see column 4, lines 60-67; column 12, lines 10-40);

a retailer system in communication with the independent system, having a processor adapted to collect promoted product POS data for the promoted product from a plurality of retailer stores, to consolidate the promoted product POS data, and to transfer the promoted product POS data for the trade promotion to the independent system (see column 12, lines 10-40); and

a manufacturer system in communication with the independent system (see column 11, lines 20-67 – column 12, lines 1-40).

Jones does not expressly mention "promoted product identification and payment term information", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 38, Jones teaches:

The system of Claim 37, wherein the independent system is adapted provide the retailer system and the manufacturer system access to the independent system electronic database to independently verify the stored terms of the trade promotion, to determine the number of promoted products sold during the trade promotion and to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see column 12, lines 1-40).

As per claim 39, Jones teaches:

The system of Claim 38, wherein the independent system provides the manufacturer system and the retailer system access to the independent system through the internet (see column 6, lines 53-67).

As per claim 40, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to generate a table of UPC codes that are active in the trade promotion and to transfer said table of UPC codes to the retailer system (see column 5, lines 51-64 and column 12, lines 1-40).

As per claim 41, Jones teaches:

The system of Claim 40, wherein the retailer system is adapted to collect product POS data for all of the products the retailer sells and to use the table of UPC codes to filter the product POS data to obtain promoted product POS data for the promoted product (see column 12, lines 1-40).

As per claim 42, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to verify that the promoted product POS data for the promoted product is within acceptable tolerances for the promoted product (see column 12, lines 1-40).

As per claim 43, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to consolidate all of the promoted product POS data for a plurality of promoted products for the manufacturer (see columns 11-12).

As per claim 44, Jones teaches:

The system of Claim 43, wherein the independent system is adapted to process the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see column 6, lines 26-67).

As per claim 45, Jones teaches:

The method of Claim 1, wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS system of at least one retailer store (see column 12, lines 1-40).

As per claim 46, Jones teaches:

The method of Claim 1, wherein the retailer has a plurality of retailer stores with in-store POS system, and wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS systems in said plurality of retailer stores (see column 6, lines 27-53).

As per claim 47, Jones teaches:

A method for an independent system operator to administer a trade promotion for a promoted, product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

capturing terms of the trade promotion for the promoted product *at least including promoted product identification and payment term information for said trade promotion (see column 4, lines 40-67 – column 11, lines 20-67)*;

storing the captured terms of the trade promotion in, an independent system operator database (see column 4, lines 40-67; column 11, lines 20-67 – column 12, lines 1-40);

receiving *from the retailer* promoted product POS data for the promoted product of the trade promotion from at least one in-store POS system of the retailer (see column 12, lines 11-40);

processing the promoted product POS data in accordance with the stored *payment term information* of the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer, for the trade promotion (see column 4, lines 20-67; column 11, lines 20-67 – column 12, lines 1-40); and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion (see column 12, lines 1-40).

Jones does not expressly mention "promoted product identification and payment term information", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process.

Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 48, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see columns 11-12).

As per claim 49, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator: enabling the retailer to change the stored terms of the promotion prior to the start of the trade, promotion, capturing the changed terms of the trade promotion and storing the changed terms of the trade promotion in the independent system operator database (see columns 11 and 12).

As per claim 50, Jones teaches:

The method of Claim 49, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see columns 11 and 12).

As per claim 51, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion (see column 12, lines 1-40).

As per claim 52, Jones teaches:

The method of Claim 51, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see column 12, lines 1-40).

As per claim 53, Jones teaches:

The method of Claim 52, wherein the retailer and manufacturer use an internet to access the stored terms of the trade promotion in the independent system operator database, the number of promoted products sold during the trade promotion and the amount of money the manufacturer owes to the retailer for the trade promotion (see column 12, lines 1-40 and column 6, lines 53-67).

As per claim 54, Jones teaches:

The method of Claim 47, wherein the step of storing the captured terms of the trade promotion includes storing the terms of the trade promotion in at least one predefined table in the independent system operator database (see column 12, lines 1-40).

As per claim 55, Jones teaches:

The method of Claim 54, wherein the step of storing the captured terms of the trade promotion includes creating a UPC lists for the promoted products (see column 5, lines 50-64).

As per claim 56, Jones teaches:

The method of Claim 55, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer (see column 6, lines 26-52 and column 12, lines 1-40).

As per claim 57, Jones teaches:

The method of Claim 56, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list (see column 6, lines 26-52 and column 12, lines 1-40).

As per claim 58, Jones teaches:

The method of Claim 47, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores (see column 12, lines 1-40).

As per claim 59, Jones teaches:

The method of Claim 58, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores (see column 12, lines 1-40).

As per claim 60, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances (see column 12, lines 1-40).

As per claim 61, Jones teaches:

The method of Claim 60, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion (see column 12, lines 1-40).

As per claim 62, Jones teaches:

The method of Claim 60, wherein processing the promoted product POS data in accordance with the terms of the trade promotion includes creating at least one settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion (see column 5, lines 52-64 and column 12, lines 1-40).

As per claim 64, Jones teaches:

The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer (see column 12, lines 1-40).

As per claim 65, Jones teaches:

The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer (see column 12, lines 1-40).

As per claim 66, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see columns 11-12).

As per claim 67, Jones teaches:

The method of Claim 66, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see columns 11-12).

As per claim 68, Jones teaches:

A system for enabling an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said system comprising:

means for the independent system operator to capture terms of the trade promotion for the promoted product *at least including promoted product identification*

and payment term information for said trade promotion (see column 4, lines 40-67;

column 11, lines 20-67);

means for the independent system operator to collect *from the retailer* promoted

product POS data for the promoted product from at least one in-store POS system of

the retailer (see column 12, lines 11-40);

means for the independent system operator to determine the amount of money

the manufacturer owes to the retailer based on the promoted product POS data and the

payment term information of the trade promotion (see column 11, lines 20-67 – column

12, lines 1-40); and

means for the independent system operator to pay the retailer the amount of

money determined by the independent system operator to be owed to the retailer by the

manufacturer for the trade promotion (see column 12, lines 1-40).

Jones does not expressly mention "promoted product identification and payment

term information", but in lines 30-40 of column 12 Jones teaches that by crafting the

promotion contract around performance goals evidenced by incremental sales volume

increases, and having recourse to a valid third party audit of the performance achieved,

both retailer and manufacturer have a clear and current factual record to use in

resolving payment disputes. An audit, according to Jones, materially reduces the

current cost for both retailers and manufacturers to track, collate, and transmit data on

performance. As a result, a prompt and accurate settlement between the parties

materially reduces the cost of resolving the disputes fostered by the current process.

Therefore, it would be inherent that to track the performance that would help

manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 69, Jones teaches:

The system of Claim 68, wherein the retailer has a plurality of stores with in-store POS systems and a retailer network which collects product POS data from the plurality of in-store POS systems in the plurality of stores and filters the consolidated product POS data to obtain consolidated promoted product POS data, and wherein the collecting means is adapted to receive the consolidated promoted product POS data from the retailer network (see column 12, lines 1-40).

As per claim 70, Jones teaches:

The system of Claim 68, where the determining means includes means for verifying that the promoted product POS data is within acceptable tolerances for the promoted product (see column 12, lines 1-40).

As per claim 71, Jones teaches:

The system of Claim 68, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer (see column 12, lines 1-40).

As per claim 72, Jones teaches:

The system of Claim 68, wherein the reporting means reports the promoted product POS data via an internet (see column 6, lines 53-67).

As per claim 73, Jones teaches:

The system of Claim 68, wherein the determining means consolidates the promoted product POS data for a plurality of trade promotions, for the manufacturer and the paying means aggregates payments owed to the retailer by the manufacturer for said plurality of trade promotions (see column 12, lines 1-40).

As per claim 74, Jones teaches:

A method for an independent system operator to administer a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

storing the terms of the trade promotions *at least including promoted product identification and payment term information for said trade promotion* in an independent system operator database (see column 4, lines 40-67; column 11, lines 20-67);

providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions (see column 11, lines 20-67 – column 12, lines 1-40);

receiving *from the retailer* promoted product POS data during the trade promotions from at least one in-store POS system of the retailer (see column 12, lines 11-40);

storing the promoted product POS data in the independent system operator database (see column 12, lines 10-40) ;

determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and the *payment term information* of the trade promotion (see column 4, lines 60-67; column 12, lines 10-40);

storing the amount of money the manufacturer owes the retailer in the independent system operator database (see column 12, lines 10-40);

providing the retailer and manufacturer access to the independent system operator database during the *conduct of the trade* promotion to determine the amount of money the manufacturer owes the retailer for the trade promotion (see column 12, lines 10-40); and

facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer (see column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment term information", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have

to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 75, Jones teaches:

The method of Claim 74, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see columns 11-12).

As per claim 76, Jones teaches:

The method of Claim 75, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see columns 11-12).

As per claim 77, Jones teaches:

A method for independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps the independent system operator:

capturing terms of the trade promotion including an identification of the retailer, an identification of the manufacturer, a trade promotion type, a UPC Code for the promoted product, a payment value for the promoted product, and link codes for associated discounts if the trade promotion is an electronic discount trade promotion (see column 5, lines 51-64 and column 12, lines 1-40);

storing said captured terms of the trade promotion in an independent system operator database (see column 4, lines 40-67; column 11, lines 20-67);

receiving *from the retailer* promoted product POS data for said trade promotion from at least one in-store POS system of the retailer (see column 12, lines 11-40);

processing the promoted product POS data in accordance with the *payment value for the promoted product* of the trade promotion stored in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40); and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion (see column 12, lines 10-40).

Jones does not expressly mention "payment value for the promoted product", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 78, Jones teaches:

The method of Claim 77, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see columns 11-12).

As per claim 79, Jones teaches:

The method of Claim 77, which further includes the step of the independent system operator: enabling the retailer to change at least one of the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database (see column 12, lines 1-40).

As per claim 80, Jones teaches:

The method of Claim 79, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed any of the terms of the trade promotion (see columns 11-12).

As per claim 81, Jones teaches:

The method of Claire 77, which further includes the step of consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see column 11-12).

As per claim 82, Jones teaches:

The method of Claim 77, which further includes the step of processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see columns 11-12).

As per claim 84, Jones teaches:

A method for enabling a retailer and a manufacturer involved in a plurality of trade promotions for a plurality of promoted products to independently verify terms of the trade promotions for the promoted products using an independent system, said method comprising the steps of:

capturing the terms of the trade promotions for the promoted products in an independent system which operates independently of the control of the retailer and the manufacturer, including retailer identification, manufacturer identification, trade promotion type, UPC Codes for the promoted products, payment values for the promoted products, and link codes for associated discounts if any of the trade promotions are electronic discount trade promotions (see column 5, lines 50-67 and columns 11-12);

storing the captured terms of the trade promotions in an independent system database (see columns 11-12); and

Jones does not expressly teach, "enabling the retailer and the manufacturer to access the independent system database to determine the stored terms of the trade promotions". However, Jones teaches in lines 10-30 of column 12 that the audit system stores and documents the promotional performance on behalf of the retailer and that the retailer and the manufacturer have access to this information to support the settlement

process. Therefore, it would be inherent that the audit system stores the promotional performance in its database, and that this database would be accessible to the retailer or manufacturer to help them in the settlement process.

As per claim 85, Jones teaches:

The method of Claim 84, wherein the step of the independent system enabling the retailer and manufacturer to access the database to determine the terms of the trade promotions includes enabling the retailer and manufacturer to access the independent system database through an internet (see column 6, lines 53-67 and columns 11-12).

As per claim 86, Jones teaches:

The method of Claim 84, which further includes the step of the independent system: enabling the retailer to change at least one of the captured terms of the trade promotions prior to the start of the trade promotions, capturing the changed terms of the trade promotions and storing the changed terms of the trade promotions in the independent system database (see column 12, lines 1-40).

As per claim 87, Jones teaches:

The method of Claim 86, which further includes the step of the independent system enabling the retailer and the manufacturer to access each of the terms of the trade promotions stored in the independent system database to independently verify each of the terms of the trade promotions and to determine if the retailer changed any of the terms of the trade promotions (see columns 11-12).

As per claim 88, Jones teaches:

A method for an independent system operator to administer a plurality of trade promotions for a plurality of promoted products involving a plurality of manufacturers and a retailer having a plurality of stores with in-store POS systems, said method comprising the steps of the independent system operator:

capturing terms of each of the trade promotions for each of the promoted products *at least including promoted product identifications and payment term information for said trade promotions (see column 4, lines 40-67; column 11, lines 20-67)*;

storing the captured terms of each of the trade promotions in at least one independent system database (see column 11, lines 20-67 – column 12, lines 1-40);

receiving *from the retailer* consolidated promoted product POS data including promoted product POS data for each of the promoted products from each of the in-store POS systems of the retailer (see column 12, lines 10-40);

processing the promoted product POS data the promoted products in accordance with the stored *payment term information* of the trade promotions in the independent system database for said promoted products to determine amounts of money the manufacturers owe to the retailer for the trade promotions (see column 4, lines 40-67; column 11, lines 20-67 – column 12, lines 1-40); and

facilitating the manufacturers' payments of the amounts of money owed to retailer for the trade promotions (see column 4, lines 60-67; column 12, lines 30-40).

Jones does not expressly mention "promoted product identification and payment term information for said trade promotion", but in lines 30-40 of column 12 Jones

teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 89, Jones teaches:

A method for an independent system operator to administer a plurality of trade promotions for a plurality of promoted products involving a plurality of manufacturers and a plurality of retailers where each retailer has a plurality of stores with in-store POS systems, said method comprising the steps of the independent system operator:

capturing terms of each of the trade promotions for each of the promoted products *at least including promoted product identifications and payment term information for said trade promotions (see column 11, lines 20-67 – column 12, lines 1-40)* ;

storing the terms of each of the trade promotions in at least one independent system database (see column 12, lines 10-40);

receiving *from the retailer* consolidated promoted product POS data for each of the promoted products from each of the in-store POS systems of the retailers (see column 12, lines 10-40);

processing the promoted product POS data for each of the promoted products in accordance with the stored *payment term information* of the trade promotions in the independent system database for said promoted products to determine amounts of money the manufacturers owe to the retailers for the trade promotions (see column 12, lines 10-40); and

facilitating the manufacturers payments of the amounts of money owed to the retailers for the trade promotions (see column 4, lines 60-67; column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment term information for said trade promotion", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would

have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 90, Jones teaches:

A method for an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

capturing terms of the trade promotion for the promoted product *at least including promoted product identification and payment term information for said trade promotion (see column 11, lines 20-67 – column 12, lines 1-40);*

storing the captured terms of the trade promotion in an independent system operator database (see column 11, lines 20-67 – column 12, lines 1-40);

enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see column 12, lines 10-40);

enabling the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion and storing any changed terms of the trade promotion in the independent system operator database (see column 12, lines 10-40);

enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify

the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40);

receiving *from the retailer* promoted product POS data for the promoted product of the trade promotion from at least one in-store POS system of the retailer (see column 12, lines 10-40);

processing the promoted product POS-data in accordance with the stored *payment term information* of the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40);

verifying that the promoted product POS data is within acceptable tolerances (see column 12, lines 10-40);

. enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see column 12, lines 10-40); and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion (see column 12, lines 10-40).

Jones does not expressly mention "promoted product identification and payment term information for said trade promotion", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones,

materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

As per claim 91, Jones teaches:

The method of Claim 90, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion (see column 12, lines 1-40).

As per claim 92, Jones teaches:

The method of Claim 90, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores (see column 6, lines 27-52 and columns 11-12).

As per claim 93, Jones teaches:

The method of Claim 92, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores (see column 6, lines 27-52 and columns 11-12).

As per claim 94, Jones teaches:

The method of Claim 90, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion (see column 12, lines 1-40).

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18, 63 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (U.S. 5,832,458)

As per claim 18, Jones does not expressly teach, the method of claim 1, wherein the step of facilitating the manufacturer's payment to the retailer includes paying the retailer using an electronic fund transfer. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that if Jones facilitates the payment to retailers, using an electronic fund transfer would be an obvious feature to add.

As per claim 63, Jones does not expressly teach, the method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator paying the retailer using an electronic funds transfer. However, it would have been obvious to a person of ordinary skill in the art at the time

the application was made, to know that if Jones facilitates the payment to retailers, using an electronic fund transfer would be an obvious feature to add.

As per claim 83, Jones does not expressly teach, the method of Claim 77, wherein the step of capturing terms of the trade promotion further includes capturing special payment terms. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that special payment terms would be another trade promotion offer by retailers, the same as offering price reduction or free goods and this feature would be added to Jones.

Conclusion

4.   The Applicant's arguments filed 05/14/02 have been fully considered but they are not persuasive. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). The Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

The Applicant argues that the Jones system does not receive product or promoted product POS data collected by the retailer. The Applicant further argues that Jones primarily relates to coupon and that Jones does not expressly, implicitly or inherently provide that the Jones electronic audit system calculates the amount of money owed by the manufacturer to the retailer in accordance with contract terms of a trade promotion between a manufacturer and a retailer where such terms are captured and stored in an independent operation system database.

The Examiner answers that Jones electronic audit system utilizes a passive collection of actual POS data by item and by transaction to establish a database of

performance. By Jones tying the contract to performance, the electronic audit simplifies settlement and provides a clear record to both parties regarding the results of the event (see column 11, lines 40-67). Therefore, it would be inherent that the Jones electronic audit system stores and provides all the data necessary to determine and calculate the amount of money owed by the manufacturer to the retailer. And, lines 40-52 of column 11 teach that this calculation was already done by the manufacturer but with the Jones audit system this calculation is performed more easily.

The Applicant argues that while Jones mentions the contract between the manufacturer and retailer for a trade promotion, Jones supposedly does not expressly or implicitly mention capturing the terms of the contract such as promoted product identification and payment term information between the manufacturer and retailer of the trade promotion, storing such captured terms in the electronic audit system or the electronic audit system using such stored terms of the contract between the manufacturer and the retailer to calculate the amount of money the manufacturer owes to the retailer for the trade promotion.

The Examiner answers that Jones teaches in lines 30-40 of column 12 that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between

the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment term information because these items are essential to make such determination.

The Applicant argues that Jones does not expressly state or imply that the electronic audit system makes any calculations of what the manufacturer owes the retailer. Moreover, the Applicant argues that Jones does not expressly teach or implicitly provide that the electronic audit system would use the data on the promoted product and the captured and/or stored terms of the contract between the manufacturer and retailer to determine the amount of money the manufacturer owes the retailer for the trade promotion.

The Examiner answers that Jones teaches in lines 40-67 of column 11 that the manufacturer reviews retailer purchase history and retailer contractual performance measures, and prepares check to retailer in accordance with internal/retailer supplied information. The Manufacturer engages retailer finance/accounting personnel to resolve deductions as required. The retailer receives payment from the manufacturer and has finance/accounting personnel resolve deductions as required. The electronic audit of the trade promotion process, according to the present application, utilizes the passive collection of actual POS data by item and by transaction to establish a database of performance. By tying the contract to performance, the electronic audit simplifies settlement and provides a clear record to both parties regarding the results of the event.

Therefore, it would be inherent that the Jones audit system would help the manufacturer and retailer in settling the amount of money that the manufacturer owes the retailer, making it easier to make the calculation as the audit system stores all the transaction data correlated with the term of the promotion contract.

The Applicant argues that the feature of storing the terms of the contract between the manufacturer and retailer in the audit system is not present in Jones, but rather, that Jones states that all POS transactions are monitored and recorded. The Applicant further argues that while Jones states that the manufacturer negotiates a contract with the retailer for the reduced prices or a rebate given to the satisfied retailer for performance, Jones does not expressly or implicitly state and it is not inherently in Jones that the terms of the contract including payment term information are captured or stored in the electronic audit system of Jones for use by the electronic audit system to calculate the amount of money that the manufacturer owes to the retailer for the product promotion.

The Examiner answers that Jones teaches in lines 60-67 of column 11 that the electronic audit of the trade promotion process utilizes the passive collection of actual POS data by item and by transaction to establish a database of performance. By tying the contract to performance, the electronic audit simplifies settlement and provides a clear record to both parties regarding the results of the event. Therefore, it would be inherent that Jones would store the terms of the contract because that is the way the Jones system would know which parameters it needs to monitor to arrive to a settlement for the money owed between the manufacturer and the retailer. If the Jones

audit system did not know the term of the contract it would not be able to monitor the pertinent features related to the contract which would not help in reaching a settlement between the parties.

The Applicant argues that the Jones system also fails to solve the problem that manufacturer and retailers do not trust or have faith in each other in calculating deductions or in handling payments. According to the Applicant, the Jones system merely provides data to the manufacturer and retailer who then need to make the appropriate calculations. The Applicant also argues that his present application provides manufacturer and retailer with an effective, reliable and trustworthy system operated by a third party for determining the amount of money the manufacturer owes the retailer for each trade promotion.

The Examiner answers that the purpose of the Jones audit system is to simplify settlement and provide a clear record to both parties regarding the results of the event (see column 11, lines 60-67). Therefore, it would be inherent that the Jones audit system provides manufacturers and retailers with an effective and trustworthy system for determining the amount of money the manufacturer owes the retailer.

The Applicant argues that Jones does not disclose capturing or storing the contractual terms of the trade promotion including payment term information and using such payment term information to determine the amount of money the manufacturer owes the retailer for the trade promotion and also argues that Jones does not disclose capturing or storing the contractual terms of the trade promotion including promoted

product identification and using such promoted product identification to filter the product

POS data to obtain the promoted product POS data.

The Examiner answers that Jones teaches in lines 11-30 of column 12 that the

audit system audits and tracks the results of the retailer's efforts while monitoring and

recording all POS transactions. Each transaction is stored in a record to empirically

determine what is the established sales volume for a particular product for a specified

retailer, and independently document any incremental sales volume increases to

support the trade promotion settlement process. Predetermined and customized reports

of these incremental sales volume increases, documenting promotional performance on

behalf of the retailer, is preferably sent to both the retailer and manufacturer after each

event to support the settlement process. As before, the retailer summarizes the

necessary information on promotional support activities, including the report

documentation if desired, invoices the manufacturer and deducts the price discount

from checks paid by the retailer to the manufacturer. Therefore, it would be inherent that

Jones stores and tracks the payment information and product identification to determine

the amount of money the manufacturer owes the retailer.

The Applicant argues that Jones does not disclose a method wherein the terms

of the promotions are captured and stored in an independent system database, wherein

the retailer and the manufacturer can access the independent system database to

determine the stored terms of the trade promotion.

The Examiner answers that Jones teaches in lines 10-30 of column 12 that the

audit system stores and documents the promotional performance on behalf of the

retailer and that the retailer and the manufacturer have access to this information to support the settlement process. Therefore, it would be inherent that the audit system stores the promotional performance in its database, and that this database would be accessible to the retailer or manufacturer to help them in the settlement process.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 7:30-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.
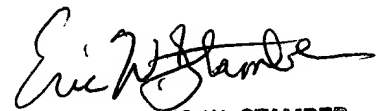
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

D.L.

Daniel Lastra

August 4, 2002

ERIC W. STAMBER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600